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## **EEOC v. William O. Benenson Rehabilitation Pavilion & Flushing Manor Geriatric Center Inc.**

Judge Nina Gershon

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## **EEOC v. William O. Benenson Rehabilitation Pavilion & Flushing Manor Geriatric Center Inc.**

### **Keywords**

EEOC, Simms, William O. Benenson Rehabilitation Pavilion, Flushing Manor Geriatric Center Inc., 05 CV 4601 (NG) (RER), Consent Decree, Disparate Treatment, Hostile Work Environment, Retaliation, Subjective Decision Making, Terms and Conditions, National Origin, Race, Health Care, Employment Law, Title VII

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,**

**Plaintiff,**

**PETRONA SIMMS, FREDERICK HYLTON,  
MARIE CILUS, TANYA WEIR, AND  
YANICK JEAN LOUIS,**

**Plaintiffs-Intervenors,**

**v.**

**WILLIAM O. BENENSON REHABILITATION :  
PAVILION & FLUSHING MANOR :  
GERIATRIC CENTER, INC., :**

**Defendants.**

**CIVIL ACTION NO.  
05 CV 4601 (NG) (RER)**

**FILED**

IN CLERKS OFFICE  
U.S. DISTRICT COURT ED. N.Y.:

★ **APR 20 2007** ★

P.M. \_\_\_\_\_  
TIME A.M. \_\_\_\_\_

**CONSENT DECREE**

This cause of action was initiated on September 29, 2005, by the Equal Employment Opportunity Commission (hereinafter "EEOC"), an agency of the United States Government, alleging that Defendant, Flushing Manor Geriatric Center, Inc., et al. (hereinafter "Defendant") violated Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 in that they engaged in discrimination against the Charging Parties and a class of other similarly situated employees (collectively "Claimants") on the basis of race (Black) and/or national origin (Caribbean). This lawsuit also alleges that a class of Defendant's employees, regardless of race or national origin, was subjected to retaliation for opposing or refusing to participate in the above-referenced discriminatory practices.

Specifically, EEOC alleged, inter alia, in its complaint that Defendant discriminated against Black and/or Caribbean employees by: 1) making harassing comments based on race

and/or national origin, 2) stopping employees from speaking in Creole while allowing other non-English languages at the facility to be spoken and discriminating against Caribbean employees for their accents and manner of speech, 3) allowing residents to make race related comments to employees such as "Nigger" and "Monkey," 4) treating Black and/or Caribbean employees with stricter rules and disciplinary actions as compared to other employees and 5) retaliating against employees who brought these issues to the attention of management.

Intervening Plaintiffs Tanya Weir, Petrona Simms, Frederick Hylton, and Marie Cilus filed a Complaint bringing similar allegations on January 5, 2006. Intervening Plaintiff Yanick Jean-Louis filed her own Complaint bringing similar allegations on January 5, 2006.

Defendant submitted Answers to the three Complaints denying any liability and alleging that it engaged in no unlawful conduct or wrongdoing of any kind.

EEOC and Intervening Plaintiffs (hereinafter "Plaintiffs") and Defendant agree that it is in their mutual interest to fully resolve the matter without further litigation.

Plaintiffs and Defendant do hereby stipulate and consent to the entry of this Decree as final and binding between the parties signatory hereto and its assigns or successors.

This Decree, and any separate Releases entered into among and between Defendant and the Claimants, resolves all matters raised in the Complaints filed herein. EEOC is not a party to the Releases referred to in this Decree. The Decree in no way affects EEOC's rights to process any future Charges that may be filed against Defendant, and to commence civil actions on any such Charges.

The parties have agreed that this Decree may be entered without Findings of Fact and Conclusions of Law having been made and entered by the Court.

In consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, it is agreed and IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. This Decree resolves all of the issues raised by the EEOC Complaint and the following EEOC Charges: Marie Cilus - 160-2005-01740, Frederick Hylton - 160-2005-00590, Petrona Simms -16G-2004-01994, Tanya Weir - 160-2005-00589 and Yanick Jean-Louis - 16G-2004-01997.

2. The parties agree that this Court has jurisdiction of the subject matter of this action and of the parties, that venue is proper, and that all federal administrative prerequisites have been met.

3. No party shall contest the jurisdiction of the federal court to enforce this Decree and its terms or the right of any party to bring an enforcement suit upon breach of any of the terms of this Decree by any other party.

4. Defendant shall pay a total of \$900,000 in compensatory damages, backpay damages, and attorneys' fees to the 29 Claimants identified by EEOC prior to the January 8, 2007 deadline set by the Court. The specific amounts are set forth on the document attached as Exhibit A, which shall be filed under seal.

5. Defendant shall furnish Claimants with W-2 forms for backpay and 1099 tax forms for the compensatory damage amounts and attorney's fees, and Defendant will pay its portion of taxes for the amounts of the settlement designated as backpay. Defendant shall deliver copies of the checks and tax forms to EEOC at the same time it delivers them to Claimants. (All submissions to the "EEOC" herein shall be directed to: S. Chandy, US EEOC, 33 Whitehall Street, 5th Floor, New York, New York 10004).

6. Defendant shall provide each Claimant the amounts specified in Exhibit A, less lawful deductions, if applicable, within ten (10) business days of receipt of a signed Release by Claimant.

7. In addition to the \$900,000 referenced in Paragraph four (4), Defendant shall provide reasonable attorney's fees, not to exceed \$750.00 per Claimant, for each of the 14 Claimants not represented by private counsel, to consult with an attorney before signing any Release of any rights waived. Within five (5) business days of Defendant's counsel's receipt of an invoice from such attorney, Defendant will pay this amount. Defendant will issue to Claimant a 1099 form for such payment.

8. Defendant and its managers, officers, agents, successors and assigns are enjoined from discriminating against any individual because of her or his race or national origin.

9. Defendant and its managers, officers, agents, successors and assigns are enjoined from maintaining, implementing or having any "No Creole" language policies or practices.

10. Defendant and its managers, officers, agents, successors and assigns are enjoined from retaliating against any Claimant for having asserted her or his rights under Title VII. Defendant shall not retaliate against any Claimant or witness who has participated in this matter.

11. Defendant and its managers, officers, agents, successors and assigns are enjoined from issuing discipline in a manner that discriminates against any employee because of her or his race or national origin or retaliates against any Claimant or witness who has participated in this lawsuit.

12. Defendant and its managers, officers, agents, successors and assigns are enjoined from reporting employees to the Department of Health in a manner that discriminates on the basis of race or national origin or in retaliation against any Claimant or witness who has



participated in this lawsuit. Defendant shall investigate incidents as required by Department of Health regulations when making determinations as to whether to report allegations of mistreatment, neglect or abuse at the facility, and shall have a continuing obligation to provide and/or make available relevant information to reporting agencies.

13. Defendant will maintain and implement Anti-Discrimination Policies and Procedures ("Policy") at the Flushing Manor Geriatric Center, Inc. The Policy is attached as Exhibit B. The Policy will include: (a) a clear explanation of prohibited conduct; (b) the assurance that employees who make complaints of discrimination or provide information related to such complaints will not be retaliated against; (c) a clearly described complaint process that provides accessible avenues of complaint; (d) the assurance that Defendant will review any and all complaints from employees who wish to file internal complaints; (e) the assurance that Defendant will protect the confidentiality of complaints to the extent possible; (f) a complaint process that provides a prompt, thorough, and impartial investigation; (g) the assurance that Defendant will take immediate and appropriate corrective action when it determines that discrimination has occurred; and (h) an assurance that Defendant will inform complainants of the outcome of investigations within a reasonable amount of time.

14. The revised Policy will be distributed to all of Defendant's employees within fifteen (15) business days of the entry of the Decree.

15. Defendant will provide anti-discrimination training, conducted by counsel for Defendant, to all of the managers and employees of Defendant within sixty (60) calendar days of the entry of the Decree and provide documentation of such training to EEOC within seventy-five (75) calendar days of the entry of the Decree. The training will include at least four (4) hours of annual training for all employees including managers and two (2) additional hours of annual

training for all managers. Such training will be conducted on a yearly basis for the term of the Decree and documentation will be provided to EEOC confirming the training within thirty (30) calendar days of each training session.

16. In addition, within fifteen (15) calendar days of the entry of the Decree, Defendant shall require its Director of Nursing, Grace Barbieri, to undergo an additional four (4) hours of training and counseling regarding federal laws prohibiting employment discrimination. The training and counseling will be provided by counsel for Defendant and the content of the training and counseling must be approved by EEOC. Within seven (7) calendar days of the training, Defendant must furnish EEOC with documentation confirming that the training was completed. Such training will be conducted annually for the length of the Decree or as long as Grace Barbieri remains employed by Defendant.

17. Within five (5) calendar days of the entry of this Decree, Defendant will post a Notice of Non-Discrimination attached as Exhibit C in a prominent and visible location at its facility where employee notices are typically posted.

18. As part of their initial orientation, Defendant will provide new employees with a copy of the Policy. A representative of Defendant's management will spend a minimum of thirty (30) minutes reviewing the Policy with the new employee and document this meeting for the individual's personnel file.

19. Defendant shall hire a Human Resources and Equal Employment Opportunity Coordinator (hereinafter "HR/EEO Coordinator"). The HR/EEO Coordinator will implement and oversee Defendant's Anti-Discrimination Policies and Procedures for the duration of the Decree. The HR/EEO Coordinator will be responsible for receiving and investigating complaints of discrimination. This individual shall, in addition to possessing general human



resources knowledge, be knowledgeable of anti-discrimination laws and appropriate investigatory practices and techniques, and shall have significant experience in the field of human resources. This position shall be compensated at a reasonable salary consistent with the market rate for such position. Defendant will provide EEOC with information about the background and qualifications of the top three candidates selected as finalists for the HR/EEO Coordinator position within three (3) months of the entry of the Decree. EEOC shall review the qualifications of the top three candidates and advise Defendant as to whether each individual would be suitable for hire as the HR/EEO Coordinator. Defendant may hire any of the suitable candidates for the position approved by EEOC. If EEOC finds that none of the candidates are suitable, EEOC will advise Defendant as to the deficiencies and Defendant will review additional candidates for the position and hire someone that meets EEOC review approval. The HR/EEO Coordinator will commence employment within six (6) months of entry of the Decree.

20. Defendant agrees that EEOC may monitor compliance with this Decree by inspection of Defendant's premises, records and interviews with employees at reasonable times. Defendant agrees to make available for inspection and copying records reasonably related to any of these areas, upon reasonable notice by the Commission.

21. For the duration of this Decree, Defendant shall provide a written report to EEOC with information regarding any verbal or written complaints of racial or national origin based harassment or discrimination from its employees which were received by Defendant's Designated Representatives (as defined in the Policy attached as Exhibit B and the Notice attached as Exhibit C) within thirty (30) days of receiving any such complaints. Defendant shall provide EEOC with the name of the complainant, the name of the alleged harasser, a summary of the complaint, the results of any investigation of the complaint, and remedial action, if any was

taken by Defendant. Every three (3) months during the time period of this Decree, commencing three (3) months after the entry of the Decree, Defendant shall submit a report listing the formal or informal race or national origin based discrimination or harassment complaints received during that period, or stating that it has received no such complaints during that preceding three (3) month period.

22. The Parties agree that neither this Consent Decree nor the furnishing of consideration pursuant to this Consent Decree shall be deemed or construed at any time for any purpose as an admission by Defendant as wrong doing or evidence of any liability or unlawful conduct of any kind.

23. All parties agree that Defendant must operate its facility in accordance with federal, state, local and agency laws, rules, regulations, and ordinances, including those of New York State Department of Health. Nothing in this Consent Decree shall be interpreted in a manner that tends to interfere in any way with Defendant's ability to comply with the aforementioned laws, rules, regulations and ordinances.

24. Other than as reflected in Paragraph seven (7) and Exhibit A each party shall bear its own attorney fees and costs incurred in this action.

25. This Decree, and any separate Releases entered into among and between Defendant and the Claimants, constitute the complete understanding among the respective Parties to this Decree. EEOC is not a party to any Releases referred to in this Decree. No other promises or agreement shall be binding unless agreed to in writing and signed by these parties.

26. This Decree will remain in effect for five (5) years from the date of entry. The court retains jurisdiction over this action during the duration of this Decree. The matter may be administratively closed but shall not be dismissed during the duration of this Decree. Within

thirty (30) days after the date set for the expiration of this Decree, the parties shall submit a stipulation of dismissal to the court.

FOR PLAINTIFF EEOC

Dated: 4/13/07

Elizabeth Grossman  
Elizabeth Grossman, Regional Attorney

Dated: 4/13/07

Judy Keenan  
Judy Keenan, Supervisory Trial Attorney

Dated: 4/13/2007

Sunu P. Chandy  
Sunu P. Chandy, Senior Trial Attorney (SC-3535)  
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New York, New York 10004  
Telephone No. 212-336-3706

FOR PLAINTIFFS-INTERVENORS MARIE  
CILUS, PETRONA SIMMS, FREDERICK  
HYLTON, AND TANYA WEIR

Dated: April 11, 2007

Laura A. Watanabe  
By: Laura A. Watanabe (LW 7953)  
444 Madison Ave., 17<sup>th</sup> Floor (49/50)  
New York, New York 10017  
Telephone No. 212-486-7005

FOR PLAINTIFF-INTERVENOR  
YANICK JEAN LOUIS

Dated: April 11, 2007

Albert Van-Lare  
By: Albert Van-Lare (AV 6614)  
80 Wall Street, 3<sup>rd</sup> Floor  
New York, New York 10005  
Telephone No. 212-608-1400

FOR DEFENDANT FLUSHING MANOR  
GERIATRIC CENTER, INC., ET AL.

Dated: April 17, 2007

Marc S. Wenger  
By: Marc S. Wenger  
Jackson Lewis LLP  
58 South Service Road, Suite 410  
Melville, New York 11747  
Telephone No. 631-247-0404

SO ORDERED, ADJUDGED, AND DECREED,  
Signed this 20 day of April, 2007

s/ NG  
1 Judge Nina Gershon